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~~Priority and Priority Plus rate elements; (c) PBX and Centrex trunks; and the fact that Busy Line Verify and Busy Line Interrupt were excluded. Staff Ex. 4.02 at 5. On cross examination, He further testified that Ameritech had updated its resale tariff regarding the sections governing priority and priority plus, PBX Centrex, key line, busy line, and busy line interrupt. He further testified that those revisions were consistent with the Commission's Resale Order. Tr. 1592-93.~~

~~Staff delineates at length the statutory and regulatory provisions governing Ameritech's resale offering. Staff Brief at 97-98. It proposes that the Commission's Resale Order is consistent with Section 252(d)(3), observing that the Commission specifically addressed the issue of wholesale pricing in the Resale Order. Staff also notes that the FCC approvingly mentioned the Commission's TSLRIC cost studies in its Order. Staff Brief at 100 (citing FCC Order, ¶ 915). It is also noted that the CCT, MFS, and TCG agreements allow resale of services obtained at wholesale rates. Ameritech Illinois is furnishing wholesale services to MFS, but not to CCT or TCG. Staff Brief at 101 (citing Ameritech Ex. 2.2, Schedule 1, at 19). CCT has one resale customer, to which it provides resold Centrex. Because Ameritech is not furnishing wholesale services to CCT, Staff recommends that the Commission find that Ameritech is not complying with the Section 271(c) requirements for its resale offering.~~

In Staff's Phase I Initial Brief, Staff argued that there were four areas in which Ameritech's November 20, 1996 wholesale tariffs did not comply with the Commission's Resale Order. Subsequent to this November 19, 1996 tariff filing, Ameritech updated its wholesale tariff, thereby reducing the areas of noncompliance identified at that time to the unbundling and branding of OS/DA. Staff Initial Brief, p. 101.

In terms of checklist compliance, Staff concluded that Consolidated Communications ("CCT") was the only facilities-based carrier actually providing service to both residential and business customers. Because Ameritech was not providing wholesale services to CCT, Staff concluded that Ameritech had not complied with Section 271(c) for this checklist item. Staff Initial Brief, p. 101.

On February 20, 1997, subsequent to the filing of briefs and reply briefs in this proceeding, Staff submitted to the Commission a proposed investigation order to investigate Ameritech's wholesale tariff. The five issues identified at that time included: 1.) aggregation of usage services to obtain volume discounts as discussed by the FCC Order in CC Docket 96-98; 2.) competitive classifications of the services in the Ill. C. C. No. 19, Part 22 tariff; 3.) appropriate charges to be applied when a customer converts to a reseller on an "as is" basis; 4.) unbundling of Operator Services and Directory Assistance (OS/DA); 5.) branding of resold OS/DA services; and, 6.) access to Advanced Intelligent Network (AIN) triggers. The language of the order was found to have some legal infirmities. The docket was dismissed with the understanding that a new order would be submitted.

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Staff states that since the dismissal of the investigation, it has come to its attention that Ameritech is not offering to sell on a wholesale basis the 9-1-1 services provided to Public Safety Answering Positions (PSAPs). Since Ameritech's wholesale order was approved by the Commission, FCC Order 96-325 was entered. Paragraph 871 of that order states:

Section 251(C)(4)(A) imposes on all incumbent LECs the duty to offer for resale "and telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." We conclude that any incumbent LEC must establish a wholesale rate for each retail service that: (1) meets the statutory definition of a "telecommunications service," and (2) is provided at retail to subscribers who are not "telecommunications carriers." We thus find no statutory basis for limiting the resale duty to basic telephone services, as some suggest.

As a result of the FCC's order, Ameritech must justify the exclusion from its wholesale tariff of 911 services provided to (PSAPs).

Staff concludes that the information to be gathered during the investigation contemplated by a new Staff Report will allow Staff to determine whether the provisions of Ameritech's wholesale tariffs are in violation of Commission and/or FCC orders. Until that investigation is completed, Staff states that it cannot give an informed opinion as to whether Ameritech has met checklist requirements with respect to resale. For these reasons, as well as the fact that Ameritech is still not offering wholesale services to CCT, Staff recommends that the Commission find that Ameritech has not met the competitive checklist with respect to this checklist item.

#### Ameritech

Ameritech witness Gebhardt testified that all of its telecommunications services that are available at retail are also available for resale at wholesale rates to competing carriers. Ameritech Ex. 2.0 at 46-47.

Ameritech argues that its wholesale/resale offerings comply with this Commission's Wholesale Order in Docket No. 95-0458/0531, with Sections 251(c)(4) and 252(d)(B), and, therefore, with the competitive checklist. Section 251(c)(4) imposes upon Ameritech a duty to make available for resale at wholesale rates any telecommunications services that it makes available to its own customers and to do so on a nondiscriminatory basis, and Section 252(d)(3) provides that the Commission shall determine wholesale rates on the basis of retail rates charged to the subscriber less avoided costs. In the Wholesale Order in Docket 95-0458/0531, we comprehensively addressed the pricing requirement under Section 252(d)(3) and adopted a pricing methodology. MCI Arbitration Decision, Docket 96-AB-006, at 45; First Report and Order, ¶¶ 878-935. Ameritech notes that the FCC subsequently found that the Commission's methodology conformed with the Act. Thus, Ameritech takes the position that, to the extent that it has complied with the mandate of the Wholesale Order, it also has complied with Section 252(d)(4) and the

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competitive checklist. Section 271(c)(2)(B)(xiv). Ameritech has filed tariffs in conformity with the Wholesale Order in ICC No. (for competitive services) and in ICC No. 20 (for noncompetitive services). Moreover, Ameritech Illinois argues that it is currently furnishing resold service at wholesale rates to MFS, pursuant to the parties' interconnection agreement, and that such services are available for purchase pursuant to the tariffs cited above. Thus, Ameritech urges the Commission to find that it has satisfied this element of the checklist.

Concerning Access' complaint that Ameritech is hampering competition by reselling services at a wholesale discount level that averages 17.5% overall and 7.3% for trunk terminations, Ameritech answers that Access has provided no legal basis for disputing the level of the discount. Access does not allege that Ameritech Illinois has miscalculated the avoided costs of offering wholesale services generally or of offering DID trunks in particular. Nor has Access proffered any evidence to support its claim that competition will be inhibited by legally prescribed discount levels. With respect to Access' complaint that Ameritech has refused to negotiate further discounts, the Company responds that there is no legal or factual basis for that claim.

Regarding AT&T's contention that Ameritech's retail/wholesale offering is inadequate because it does not offer service transport facilities ("STF") on a wholesale basis, Ameritech notes that it has revised its retail tariff to include STF services on a wholesale basis. Ameritech Ex. 1.1 at 42. With respect to AT&T's complaint that Ameritech fails to provide resellers with adequate notice of new services, Ameritech notes that it has agreed to a 45-day advance notice provision with AT&T and to make advance notice available to other resellers as well. Ameritech Ex. 1.1 at 45. Thus, the Company contends that it has satisfactorily addressed these issues.

With respect to the issue of selective routing of OS/DA traffic, Ameritech states that it will provide selective routing through the use of line class codes. The Company asserts, however, that it takes far fewer line class codes (as few as one) to provision selective routing in the ULS context than to provision selective routing in the resale context. As a result of AT&T's BFR requesting selective routing, Ameritech Illinois has determined that selective routing, when requested in the context of ULS, is technically feasible in existing Ameritech switches. Thus, Ameritech no longer will require purchasers of ULS that request selective routing of OS/DA traffic to their own OS/DA platform (or the platform of another provider) to submit a BFR when such requests are "normal" in scope and require no more than 25 line class codes to fulfill; such selective routing will be offered on a standard tariff basis. Under this proposed arrangement, Ameritech will unbundle and custom route OS/DA traffic to specified trunk ports for the purpose of either (1) routing the traffic to the OS/DA platform of another provider or (2) routing traffic over separate trunks to the Ameritech Illinois OS/DA platform so that the traffic can be unbranded or rebranded with the name of the requesting carrier. Ameritech Illinois suggests that this should address AT&T's concern that its major market entry strategy will involve the purchase of network elements/ULS in conjunction with selective routing to AT&T's OS/DA platform.

However, with respect to AT&T's position that Ameritech should be required to provide selective routing of OS/DA in a resale environment, Ameritech contends that the uncontroverted record evidence establishes that 400 to 700 line class codes are required per carrier/per switch when a carrier wishes to resell Ameritech's services in conjunction with the selective routing of OS/DA traffic to a separate platform. In Ameritech's view, AT&T's position is based on speculation that Ameritech will not need to replicate all line class codes used by all customers in a resale environment, because resellers will request to sell less than all of Ameritech's ' services. Ameritech suggests that this claim, in addition to being unsupported, contradicts AT&T's testimony that it intends to offer every service that Ameritech offers (AT&T Ex. Supp. 3.2, p. 2 of 1-7-97 letter). Because Ameritech requires 400 to 700 line class codes per switch in the context of selective routing and resale, however, Ameritech faces a very real possibility of exhausting the available line class codes in any given switch. It is urged that this is plainly an issue of technical feasibility under 47 C.F.R. ¶ 51.5.

Finally, as to AT&T's claim that Ameritech can also use "AIN" technology to perform customized routing, Ameritech Illinois responds that the Commission already has addressed the issue of access to AIN triggers, finding that in light of network reliability concerns, the issue needs further investigation in an appropriate national forum.

#### Commission Conclusion

As to customized routing in the resale environment, Ameritech has placed unreasonable restrictions on a CLEC's access to customized routing under total services resale. In a resale environment, Ameritech has offered to handle all requests for customized routing through the BFR process. Ameritech attempts to justify this restriction by claiming that selectively routing OS/DA traffic under resale would require all 400-700 existing line class codes used in Ameritech's switches to be duplicated and, as a result, the capacity of the switch would likely be exhausted.

The Commission finds Ameritech's justification in this regard conclusory and speculative, as it is based on the broad generalization that AT&T plans to offer its customers every service which Ameritech currently offers its own customers. Ameritech Ex. 10.1, pp.4-S. The supplemental evidence has shown that this is not the case since many of an ILEC's line class codes are used for services that a CLEC would not offer at all, such as party line services, payphone services, ISDN services, INWATS and OUTWATS services, etc. AT&T Ex. 9.0, p.27. Ameritech's conclusion is also based on its assumption that other CLECs would request the same type of flexibility as AT&T, so that demand could outstrip the supply of line class codes; however, the Commission agrees with AT&T that this assumption is baseless since many CLECs will not offer OS/DA on their own platforms. AT&T Ex. 9.0, p.27.

The Commission also finds that Ameritech's claims in this regard fall short of clear and convincing as outlined in the FCC's rules. In the BFR process Ameritech has failed to

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offer evidence as to which switches use what number of line class codes and how that figure compares to the line class code capacity of the switch. In the BFR process Ameritech has only provided a list of switches it claims are "resale incapable" based on the faulty assumptions noted above. This evidence is far from providing clear and convincing evidence on a switch-by-switch basis as required by the FCC rules and our Wholesale/Platform Order.

Furthermore, the Commission rejects Ameritech's attempt to avoid its obligation to provide customized routing by making the claims that there are problems associated with uniquely routing OS/DA traffic in certain switches without special construction work to expand or update the capacity of those switches. Ameritech Ex. 10.1, p.6. As noted above, however, the FCC rules make it clear that it is not sufficient for Ameritech to claim that a request for customized routing will require some development or network modifications.

Accordingly, Ameritech has not met this item on the checklist.

~~We find that Ameritech has established that all of its telecommunications services that are available at retail are also available for resale at wholesale rates to competing carriers. Ameritech makes available OS/DA with its resold services and with its unbundled local switching service. Ameritech Illinois also offers to unbundle OS/DA services from its unbundled local switching service. Further, it offers to unbundle OS/DA services from its resale offering and to rebrand such services where they are purchased by carriers in conjunction with other resold services to the extent technically feasible. Ameritech Ex. 2.0 at 46-47.~~

~~These wholesale/resale offerings comply with our Wholesale Order in Docket 95-0458/0531, with Sections 251(c)(4) and 252(d)(B), and, therefore, with the competitive checklist. In the Wholesale/Resale Order, comprehensively addressed the pricing requirement under Section 252(d)(3) and adopted a pricing methodology. MCI Arbitration Decision, Docket 96 AB 006, at 45; First Report and Order, ¶¶ 878-935. The FCC subsequently found that the Commission's methodology conformed with the Act. Thus, just as Ameritech has also complied with the mandate of the Wholesale/Resale Order, it has also complied with Section 252(d)(4) and the competitive checklist. Section 271(c)(2)(B)(xiv). Ameritech has filed tariffs in conformity with the Wholesale Order in ICC No. (for competitive services) and in ICC No. 20 (for noncompetitive services). Although Access has challenged the wholesale rates, we agree with Ameritech that Access has provided no legal basis for disputing the level of the discount. Access has presented no evidence that Ameritech Illinois has miscalculated the avoided costs of offering wholesale services, nor has Access proffered evidence to support its claim that competition will be inhibited by the discount levels we have prescribed. Thus, with respect to Access' complaint that Ameritech has refused to negotiate further discounts, there is no legal or factual basis for that claim. Ameritech also established that it currently is furnishing resold service at wholesale rates to MFS, pursuant to the parties' interconnection agreement.~~

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~~and that such services are available for purchase pursuant to the tariffs cited above. Thus, Ameritech has satisfied this element of the checklist.~~

~~AT&T's contention that Ameritech's retail/wholesale offering is inadequate because it does not offer service transport facilities ("STF") on a wholesale basis is rendered moot by Ameritech's revision to its retail tariff adding STF services on a wholesale basis. Ameritech also has resolved AT&T's complaint that Ameritech fails to provide resellers with adequate notice of new services, by agreeing to a 45-day advance notice provision with AT&T, and to make advance notice available to other resellers as well. Finally, Ameritech has answered AT&T's complaint that it would not provide selective routing in the ULS environment. As a result of AT&T's BFR requesting selective routing, Ameritech has determined that selective routing, when requested in the context of ULS, is technically feasible in existing Ameritech switches. Thus, Ameritech no longer will require ULS purchasers that request selective routing of OS/DA traffic to their own OS/DA platform (or the platform of another provider) to submit a BFR; such selective routing will be offered on a standard tariff basis when such requests fall within the normal scope of requiring the use of no more than 25 line class codes. This should allay AT&T's fears that its major market entry strategy will be impeded by an inability to purchase network elements/ULS in conjunction with selective routing to AT&T's OS/DA platform. We agree with Ameritech, however, that the record establishes that 400 to 700 line class codes are required per carrier/per switch when a carrier wishes to resell Ameritech's services in conjunction with the selective routing of OS/DA traffic to a separate platform. Accordingly, Ameritech's position of responding to requests for selective routing in the resale context on a case-by-case basis is entirely reasonable. We also reject AT&T's claim that Ameritech presently can use "AIN" technology to perform customized routing. We already have addressed the issue and found that, in light of network reliability concerns, the issue needs further investigation in an appropriate national forum.~~

#### **IV. MISCELLANEOUS ISSUES**

##### **A. Performance Monitoring and Reporting**

##### **Positions of the Parties**

AT&T argues for the establishment of a detailed set of performance measurements that purportedly would serve to monitor Ameritech's checklist compliance. AT&T Ex. 3.0 at 8-13; AT&T Ex. 3.1 at 5-29, Attach. I-III; AT&T Brief at 40. In response, Ameritech asserts that this is not the proper proceeding for addressing these issues, and that these issues have already been addressed in the negotiations and arbitrations between Ameritech Illinois and AT&T. Ameritech observes that the Commission has previously addressed the issue of what performance monitoring reporting procedures should be included in Ameritech Illinois' interconnection agreements on at least two occasions. Ameritech Brief at 111-12; AT&T Arbitration Decision, at 11-14, 30-31, 37-38, 46-47; MCI Arbitration Decision, at 56-62. Ameritech Illinois also argues that even if this were an appropriate forum for addressing AT&T's proposals, those proposals should be

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rejected on the merits for the reasons expressed in the above arbitration decisions, and the reasons stated by Mr. Mickens in this proceeding. Al Brief at 112-13 (citing Tr. 1313-49).

**Commission Conclusion**

The Commission agrees with Ameritech that this is not the proper proceeding for resolving these issues. These issues already have been addressed in negotiations between the parties and in the AT&T and MCI arbitrations. Moreover, even assuming AT&T's proposals were properly raised in this proceeding, we find that they lack merit and should be rejected.

**VI. CONCLUSION**

Based on the foregoing, the Commission concludes that Ameritech has not met the Section 271 (c) requirements for BOC entry into in-region interLATA services market. Specifically, Ameritech has not met checklist items (v) pertaining to unbundled local transport and (vi) pertaining to unbundled local switching.

**VI. FINDINGS AND CONCLUDING PARAGRAPHS**

Based on the entire record in this proceeding and being fully advised in the premises, the Commission is of the opinion and finds that:

- 1) the Commission initiated this proceeding to investigate and gather information regarding Ameritech Illinois' compliance with the "competitive checklist" requirements of Section 271(c) of the federal Telecommunications Act of 1996, in order to fulfill our consulting role with the FCC under Section 271(d)(2)(B) of the Act;
- 2) while our investigation is primarily factual in nature, the parties to this proceeding and Staff have raised a number of legal issues in this proceeding regarding the proper interpretation of Section 271(c); although these issues are ultimately within the FCC's domain, and not ours, we cannot avoid addressing certain of these legal issues even if our conclusions on these issues are not binding;
- 3) Ameritech has negotiated and executed, and we have approved, a binding interconnection agreement with CCT; CCT is not affiliated with Ameritech and is a competing provider of telephone exchange service to residential and business subscribers in Illinois; CCT offers such service either exclusively or predominantly over its own telephone exchange service facilities;

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- 4) the Commission finds that the phrase "is providing", as used in Section 271(c)(1)(A) of the Act, should be interpreted to mean "actually furnishing" or "making available" pursuant to the standards set forth herein;
- 5) Applying this interpretation of the phrase "is providing" to the record facts, Ameritech, through its interconnection agreement with CCT, has not complied with the requirements for each of the "competitive checklist" items set forth in Section 271(c)(2)(B);
- 6) Based on the above findings and our interpretation of the phrase "is providing", Ameritech has not satisfied certain of the requirements of Sections 271(c)(1)(A) and 271(c)(2)(A);
- 7) that the findings of fact and conclusions of law set forth in the prefatory portion of this Order are hereby adopted as findings of fact and conclusions of law;
- 8) any outstanding motions are hereby disposed of in a manner consistent with this Order.

IT IS THEREFORE ORDERED that this Commission recommends to the FCC that Ameritech Illinois has not complied with the competitive checklist requirements of Section 271(c)(2)(B) of the Act.

IT IS FURTHER ORDERED that this Commission should recommend to the FCC that Ameritech Illinois has not met the requirements of Sections 271(c)(1) and 271(c)(2)(A) of the Act.

IT IS FURTHER ORDERED that this Commission may at any time hereafter reexamine the issues investigated herein.

ORDER DATED:  
BRIEFS ON EXCEPTIONS DUE:  
REPLY BRIEFS ON EXCEPTIONS DUE:

June 18, 1997  
June 26, 1997  
July 2, 1997

Hearing Examiner  
Michael Guerra